

E AND R AMENDMENTS TO LB 528

Introduced by Enrollment and Review Committee: Nordquist, 7,  
Chairperson

1           1. Strike the original sections and all amendments  
2 thereto and insert the following new sections:

3           Section 1. Section 21-2003, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5           21-2003 (1) A document shall satisfy the requirements of  
6 this section and of any other provision of law that adds to or  
7 varies these requirements to be entitled to filing by the Secretary  
8 of State.

9           (2) The Business Corporation Act shall require or permit  
10 filing the document in the office of the Secretary of State.

11           (3) The document shall contain the information required  
12 by the act. It may contain other information as well.

13           (4) The document shall be typewritten or printed.

14           (5) The document shall be in the English language. A  
15 corporate name shall not be required to be in English if written  
16 in English letters or Arabic or Roman numerals. The certificate of  
17 existence required of foreign corporations shall not be required to  
18 be in English if accompanied by a reasonably authenticated English  
19 translation.

20           (6) The document shall be executed:

21           (a) By the chairperson of the board of directors of a  
22 domestic or foreign corporation, by its president, or by another of  
23 its officers;

1 (b) If directors have not been selected or the  
2 corporation has not been formed, by an incorporator; or

3 (c) If the corporation is in the hands of a receiver,  
4 trustee, or other court-appointed fiduciary, by that fiduciary.

5 (7) The person executing the document shall sign it and  
6 state beneath or opposite his or her signature his or her name  
7 and the capacity in which he or she signs. The document may, but  
8 shall not be required to, contain (a) the corporate seal, (b) an  
9 attestation by the secretary or an assistant secretary, and (c) an  
10 acknowledgment, verification, or proof.

11 (8) If the Secretary of State has prescribed a mandatory  
12 form for the document under section 21-2004, the document shall be  
13 in or on the prescribed form.

14 (9) The document shall be delivered to the Secretary of  
15 State for filing and shall be accompanied by one exact or conformed  
16 copy, except as provided in sections 21-2033 and 21-20,176, the  
17 correct filing fee, and any tax, license fee, or penalty required  
18 by law. For purposes of this subsection, delivered means physical  
19 delivery of the document by hand, mail, or commercial delivery and  
20 does not include delivery by electronic transmission.

21 Sec. 2. Section 21-2014, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23 21-2014 For purposes of the Business Corporation Act,  
24 unless the context otherwise requires:

25 (1) Articles of incorporation shall include amended and  
26 restated articles of incorporation and articles of merger;

27 (2) Authorized shares shall mean the shares of all

1 classes a domestic or foreign corporation is authorized to issue;

2 (3) Conspicuous shall mean so written that a reasonable  
3 person against whom the writing is to operate should have noticed  
4 it. For example, printing in italics or boldface or contrasting  
5 color, or typing in capitals or underlined, shall be considered  
6 conspicuous;

7 (4) Corporation or domestic corporation shall mean a  
8 corporation for profit, which is not a foreign corporation,  
9 incorporated under or subject to the provisions of the act;

10 (5) Deliver ~~shall include mail;~~ or delivery shall mean  
11 any method of delivery used in conventional commercial practice,  
12 including delivery by hand, mail, commercial delivery, and  
13 electronic transmission;

14 (6) Distribution shall mean a direct or indirect transfer  
15 of money or other property, except a corporation's own shares,  
16 or incurrence of indebtedness by a corporation to or for the  
17 benefit of its shareholders in respect of any of its shares. A  
18 distribution may be in the form of a declaration or payment of a  
19 dividend, a purchase, redemption, or other acquisition of shares, a  
20 distribution of indebtedness, or otherwise;

21 (7) Effective date of notice shall have the same meaning  
22 as in section 21-2015;

23 (8) Electronic transmission or electronically transmitted  
24 shall mean any process of communication not directly involving the  
25 physical transfer of paper that is suitable for the retention,  
26 retrieval, and reproduction of information by the recipient;

27 ~~(8)~~ (9) Employee shall include an officer but not a

1 director. A director may accept duties that make him or her also an  
2 employee;

3 ~~(9)~~ (10) Entity shall include corporation and foreign  
4 corporation, not-for-profit corporation, limited liability company,  
5 profit and not-for-profit unincorporated association, business  
6 trust, estate, partnership, trust, two or more persons having  
7 a joint or common economic interest, state, United States, and  
8 foreign government;

9 ~~(10)~~ (11) Foreign corporation shall mean a corporation  
10 for profit incorporated under a law other than the law of this  
11 state;

12 ~~(11)~~ (12) Governmental subdivision shall include  
13 authority, county, district, and municipality;

14 ~~(12)~~ (13) Individual shall include the estate of an  
15 incompetent or deceased individual;

16 ~~(13)~~ (14) Notice shall have the same meaning as in  
17 section 21-2015;

18 ~~(14)~~ (15) Person shall include individual and entity;

19 ~~(15)~~ (16) Principal office shall mean the office, in or  
20 out of this state, so designated in the annual report where the  
21 principal executive offices of a domestic or foreign corporation  
22 are located;

23 ~~(16)~~ (17) Proceeding shall include civil suit or action  
24 and criminal, administrative, and investigatory action;

25 ~~(17)~~ (18) Record date shall mean the date established  
26 under sections 21-2035 to 21-2050 or 21-2051 to 21-2077 on which a  
27 corporation determines the identity of its shareholders and their

1 shareholdings for purposes of the act. The determinations shall be  
2 made as of the close of business on the record date unless another  
3 time for doing so is specified when the record date is fixed;

4 ~~(18)~~ (19) Secretary shall mean the corporate officer to  
5 whom the board of directors has delegated responsibility under  
6 subsection (3) of section 21-2097 for custody of the minutes of the  
7 meetings of the board of directors and of the shareholders and for  
8 authenticating records of the corporation;

9 ~~(19)~~ (20) Share shall mean the unit into which the  
10 proprietary interests in a corporation are divided;

11 ~~(20)~~ (21) Shareholder shall mean the person in whose  
12 name shares are registered in the records of a corporation or the  
13 beneficial owner of shares to the extent of the rights granted by a  
14 nominee certificate on file with a corporation;

15 ~~(21)~~ (22) State, when referring to a part of the  
16 United States, shall include a state and commonwealth, and their  
17 agencies and governmental subdivisions, and a territory and insular  
18 possession, and their agencies and governmental subdivisions, of  
19 the United States;

20 ~~(22)~~ (23) Subscriber shall mean a person who subscribes  
21 for shares in a corporation, whether before or after incorporation;

22 ~~(23)~~ (24) United States shall include district,  
23 authority, bureau, commission, department, and any other agency of  
24 the United States; and

25 ~~(24)~~ (25) Voting group shall mean all shares of one or  
26 more classes or series that under the articles of incorporation or  
27 the act are entitled to vote and be counted together collectively

1 on a matter at a meeting of shareholders. All shares entitled by  
2 the articles of incorporation or the act to vote generally on the  
3 matter are for that purpose a single voting group.

4 Sec. 3. Section 21-2015, Reissue Revised Statutes of  
5 Nebraska, is amended to read:

6 21-2015 (1) Notice under the Business Corporation Act  
7 shall be in writing unless oral notice is reasonable under the  
8 circumstances. Notice by electronic transmission is written notice.

9 (2) Notice may be communicated in person, by mail or  
10 other method of delivery, or by telephone, telegraph, teletype, or  
11 other form of wire or wireless communication, or by mail or private  
12 carrier, or other electronic means. If these forms of personal  
13 notice are impracticable, notice may be communicated by a newspaper  
14 of general circulation in the area where published or by radio,  
15 television, or other form of public broadcast communication.

16 (3) Written notice by a domestic or foreign corporation  
17 to its shareholder, if in a comprehensible form, shall be effective  
18 (a) when mailed, if mailed postage prepaid and correctly addressed  
19 to the shareholder's address shown in the corporation's current  
20 record of shareholders, or (b) when electronically transmitted  
21 to the shareholder in a manner authorized by the shareholder.  
22 Notice by a public corporation to its shareholder shall be  
23 effective if the notice is addressed to the shareholder or group  
24 of shareholders in a manner permitted by rules and regulations  
25 adopted and promulgated under the federal Securities Exchange Act  
26 of 1934 if the public corporation has first received affirmative  
27 written consent or implied consent required under such rules and

1 regulations.

2           (4) Written notice to a domestic or foreign corporation  
3 authorized to transact business in this state may be addressed to  
4 its registered agent at its registered office or to the corporation  
5 or its secretary at its principal office, shown in its most recent  
6 annual report or, in the case of a foreign corporation that has  
7 not yet delivered an annual report, in its application for a  
8 certificate of authority.

9           (5) Except as provided in subsection (3) of this section,  
10 written notice, if in a comprehensible form, shall be effective at  
11 the earliest of the following:

12           (a) When received;

13           (b) Five days after its deposit in the United States  
14 mail, as evidenced by the postmark, if mailed postage prepaid and  
15 correctly addressed; or

16           (c) On the date shown on the return receipt, if sent  
17 by registered or certified mail, return receipt requested, and the  
18 receipt is signed by or on behalf of the addressee.

19           (6) Oral notice shall be effective when communicated if  
20 communicated in a comprehensible manner.

21           (7) If the act prescribes notice requirements for  
22 particular circumstances, those requirements shall govern. If  
23 articles of incorporation or bylaws prescribe notice requirements,  
24 not inconsistent with this section or other provisions of the act,  
25 those requirements shall govern.

26           Sec. 4. Section 21-2060, Reissue Revised Statutes of  
27 Nebraska, is amended to read:

1                   21-2060 (1) A shareholder may vote his or her shares in  
2 person or by proxy.

3                   (2) A shareholder or the shareholder's agent or attorney  
4 in fact may appoint a proxy to vote or otherwise act for ~~him or her~~  
5 the shareholder by signing an appointment form ~~either personally~~  
6 or by ~~his or her attorney in fact.~~ an electronic transmission.  
7 An electronic transmission shall contain or be accompanied by  
8 information from which one can determine that the shareholder  
9 or the shareholder's agent or attorney in fact authorized the  
10 transmission.

11                   (3) An appointment of a proxy shall be effective when  
12 a signed appointment form or an electronic transmission of the  
13 appointment is received by the inspector of election or the  
14 secretary or other officer or agent of the corporation authorized  
15 to tabulate votes. An appointment shall be valid for eleven months  
16 unless a longer period is expressly provided in the appointment  
17 form or electronic transmission.

18                   (4) An appointment of a proxy shall be revocable by the  
19 shareholder unless the appointment form or electronic transmission  
20 conspicuously states that it is irrevocable and the appointment  
21 is coupled with an interest. Appointments coupled with an interest  
22 shall include the appointment of:

23                   (a) A pledgee;

24                   (b) A person who purchased or agreed to purchase the  
25 shares;

26                   (c) A creditor of the corporation who extended it credit  
27 under terms requiring the appointment;

1           (d) An employee of the corporation whose employment  
2 contract requires the appointment; or

3           (e) A party to a voting agreement created under section  
4 21-2068.

5           (5) The death or incapacity of the shareholder appointing  
6 a proxy shall not affect the right of the corporation to accept  
7 the proxy's authority unless notice of the death or incapacity  
8 is received by the secretary or other officer or agent authorized  
9 to tabulate votes before the proxy exercises his or her authority  
10 under the appointment.

11           (6) An appointment made irrevocable under subsection (4)  
12 of this section shall be revoked when the interest with which it is  
13 coupled is extinguished.

14           (7) A transferee for value of shares subject to an  
15 irrevocable appointment may revoke the appointment if he or she  
16 did not know of its existence when he or she acquired the shares  
17 and the existence of the irrevocable appointment was not noted  
18 conspicuously on the certificate representing the shares or on the  
19 information statement for shares without certificates.

20           (8) Subject to section 21-2062 and to any express  
21 limitation on the proxy's authority appearing on the face of  
22 the appointment form or electronic transmission, a corporation  
23 shall be entitled to accept the proxy's vote or other action as  
24 that of the shareholder making the appointment.

25           Sec. 5. Section 21-20,186, Reissue Revised Statutes of  
26 Nebraska, is amended to read:

27           21-20,186 (1) A corporation shall furnish its

1 shareholders annual financial statements which may be consolidated  
2 or combined statements of the corporation and one or more of its  
3 subsidiaries, as appropriate, that include a balance sheet as of  
4 the end of the fiscal year, an income statement for that year, and  
5 a statement of changes in shareholders' equity for that year unless  
6 such information appears elsewhere in the financial statements. If  
7 financial statements are prepared for the corporation on the basis  
8 of generally accepted accounting principles, the annual financial  
9 statements shall also be prepared on that basis.

10 (2) If the annual financial statements are reported upon  
11 by a public accountant, the accountant's report shall accompany  
12 the financial statements. If not, the financial statements shall  
13 be accompanied by a statement of the president or the person  
14 responsible for the corporation's accounting records:

15 (a) Stating his or her reasonable belief whether the  
16 financial statements were prepared on the basis of generally  
17 accepted accounting principles and, if not, describing the basis of  
18 preparation; and

19 (b) Describing any respects in which the statements  
20 were not prepared on a basis of accounting consistent with the  
21 statements prepared for the preceding year.

22 (3) A corporation shall ~~mail~~ deliver the annual financial  
23 statements to each shareholder within one hundred twenty days after  
24 the close of each fiscal year. Thereafter, on written request from  
25 a shareholder who was not ~~mailed~~ delivered the statements, the  
26 corporation shall ~~mail~~ deliver to him or her the latest financial  
27 statements.

1                   Sec. 6. Original sections 21-2003, 21-2014, 21-2015,  
2 21-2060, and 21-20,186, Reissue Revised Statutes of Nebraska, are  
3 repealed.

4                   2. On page 1, strike line 2 and insert "sections 21-2003,  
5 21-2014, 21-2015, 21-2060, and 21-20,186, Reissue Revised"; and in  
6 line 3 after the second semicolon insert "to change provisions  
7 relating to notice, appointment of proxies, and delivery of  
8 documents under the act;".